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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

) Case No:	
JACKIE WINTERS, individually and)	
on behalf of all others similarly situated,	) <u>CLASS ACTION</u>	
)	
Plaintiff,	) COMPLAINT FOR VIOLATIONS	
	) OF:	
vs.)	
	)	1. NEGLIGENT VIOLATIONS
WYNDHAM CAPITAL MORTGAGE,	)	OF THE TELEPHONE
INC., and DOES 1 through 10,	)	CONSUMER PROTECTION
inclusive, and each of them,	)	ACT [47 U.S.C. §227 <i>et seq.</i>]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
Defendant.	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227 <i>et seq.</i>]
)	
)	
	) <u>DEMAND FOR JURY TRIAL</u>	
)	
)	
)	

Plaintiff JACKIE WINTERS ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of WYNDHAM CAPITAL
5 MORTGAGE, INC. (“Defendant”), in negligently, knowingly, and/or willfully
6 contacting Plaintiff on Plaintiff’s home telephone in violation of the Telephone
7 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related
8 regulations, specifically the National Do-Not-Call provisions, thereby invading
9 Plaintiff’s privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
12 a resident of California, seeks relief on behalf of a Class, which will result in at
13 least one class member belonging to a different state than that of Defendant, a North
14 Carolina corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call
15 in violation of the TCPA, which, when aggregated among a proposed class in the
16 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
17 Therefore, both diversity jurisdiction and the damages threshold under the Class
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. § 1391(b) because Defendant does
21 business within the State of California and Plaintiff resides within the County of
22 Los Angeles.

23 **PARTIES**

24 4. Plaintiff, JACKIE WINTERS (“Plaintiff”), is a natural person
25 residing in Canoga Park, California and is a “person” as defined by 47 U.S.C. § 153
26 (39).

27 5. Defendant, WYNDHAM CAPITAL MORTGAGE, INC.
28 (“Defendant”) is a nationwide mortgage provider and refinancer, and is a “person”

1 as defined by *47 U.S.C. § 153 (39)*.

2 6. The above named Defendant, and its subsidiaries and agents, are
3 collectively referred to as “Defendants.” The true names and capacities of the
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
6 names. Each of the Defendants designated herein as a DOE is legally responsible
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
8 Complaint to reflect the true names and capacities of the DOE Defendants when
9 such identities become known.

10 7. Plaintiff is informed and believes that at all relevant times, each and
11 every Defendant was acting as an agent and/or employee of each of the other
12 Defendants and was acting within the course and scope of said agency and/or
13 employment with the full knowledge and consent of each of the other Defendants.
14 Plaintiff is informed and believes that each of the acts and/or omissions complained
15 of herein was made known to, and ratified by, each of the other Defendants.

16 **FACTUAL ALLEGATIONS**

17 8. Beginning in or around November 2015, Defendant contacted
18 Plaintiff on Plaintiff’s home telephone number ending in -5544, in an attempt to
19 solicit Plaintiff to purchase Defendant’s services.

20 9. Plaintiff’s home telephone number ending in -5544 was added to the
21 National Do-Not-Call Registry on or about July 2, 2003.

22 10. Defendant contacted or attempted to contact Plaintiff from telephone
23 numbers including and not necessarily limited to (818) 639-8873 confirmed to
24 belong to Defendant.

25 11. Defendant’s calls constituted calls that were not for emergency
26 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

27 12. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
28 64.1200(c)(2), as they were an attempt to promote or sell Defendant’s services.

1 13. Plaintiff has received numerous solicitation calls from Defendant
2 within a 12-month period.

3 14. Plaintiff did not have an established business relationship with
4 Defendant during the time of the solicitation calls from Defendant.

5 15. Plaintiff did not give Defendant prior express written consent for
6 Defendant to call Plaintiff's home telephone for marketing or solicitation purposes.
7 Indeed, during one phone call, Plaintiff asked where Defendant had obtained his
8 phone number, and one of Defendant's agents stated that they obtained Plaintiff's
9 phone number from a third party company, namely "Lending Tree," with which
10 Plaintiff had no business relationship and thereby lacked consent to give out
11 Plaintiff's phone number.

12 16. Plaintiff requested for Defendant to stop calling Plaintiff during one
13 of the initial calls from Defendant, thus revoking any prior express consent that had
14 existed and terminating any established business relationship that had existed, as
15 defined under 16 C.F.R. 310.4(b)(iii)(B).

16 17. Plaintiff's request for Defendant to stop calling Plaintiff terminated
17 any established business relationship that may have existed between Plaintiff and
18 Defendant pursuant to 47 CFR § 64.1200(f)(5)(i).

19 18. Despite this, Defendant continued to call Plaintiff in an attempt to
20 solicit its services and in violation of the National Do-Not-Call provisions of the
21 TCPA thus repeatedly violating Plaintiff's privacy.

22 19. Upon information and belief, at all relevant times, Defendant failed to
23 establish and implement reasonable practices and procedures to effectively prevent
24 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
25 227(c)(5).

26 **CLASS ALLEGATIONS**

27 20. The class concerning the National Do-Not-Call violation (hereafter
28 "The DNC Class") is defined as follows:

1 All persons within the United States registered on the National
2 Do-Not-Call Registry for at least 30 days, who had not granted
3 Defendant prior express consent nor had a prior established
4 business relationship, who received more than one call made by
5 or on behalf of Defendant that promoted Defendant's products
6 or services, within any twelve-month period, within four years
prior to the filing of the complaint.

7 21. The class concerning the National Do-Not-Call violation following
8 revocation of consent and prior business relationship, to the extent they existed
9 (hereafter "The DNC Revocation Class") is defined as follows:
10

11 All persons within the United States registered on the National
12 Do-Not-Call Registry for at least 30 days, who received more
13 than one call made by or on behalf of Defendant that promoted
14 Defendant's products or services, after having revoked consent
15 and any prior established business relationship, within any
16 twelve-month period, within four years prior to the filing of the
complaint.

17 22. Plaintiff represents, and is a member of, The DNC Class, consisting
18 of all persons within the United States registered on the National Do-Not-Call
19 Registry for at least 30 days, who had not granted Defendant prior express consent
20 nor had a prior established business relationship, who received more than one call
21 made by or on behalf of Defendant that promoted Defendant's products or services,
22 within any twelve-month period, within four years prior to the filing of the
23 complaint.

24 23. Plaintiff represents, and is a member of, The DNC Revocation Class,
25 consisting of all persons within the United States registered on the National Do-
26 Not-Call Registry for at least 30 days, who received more than one call made by or
27 on behalf of Defendant that promoted Defendant's products or services, after
28 having revoked consent and any prior established business relationship, within any

1 twelve-month period, within four years prior to the filing of the complaint.

2 24. Defendant, its employees and agents are excluded from The Classes.
3 Plaintiff does not know the number of members in The Classes, but believes the
4 Classes members number in the thousands, if not more. Thus, this matter should
5 be certified as a Class Action to assist in the expeditious litigation of the matter.

6 25. The Classes are so numerous that the individual joinder of all of its
7 members is impractical. While the exact number and identities of The Classes
8 members are unknown to Plaintiff at this time and can only be ascertained through
9 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
10 The Classes includes thousands of members. Plaintiff alleges that The Classes
11 members may be ascertained by the records maintained by Defendant.

12 26. Plaintiff and members of The DNC Class and DNC Revocation Class
13 were harmed by the acts of Defendant in at least the following ways: Defendant
14 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
15 via their telephones for solicitation purposes, thereby invading the privacy of said
16 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
17 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
18 and DNC Revocation Class members were damaged thereby.

19 27. Common questions of fact and law exist as to all members of The
20 DNC Class which predominate over any questions affecting only individual
21 members of The DNC Class. These common legal and factual questions, which do
22 not vary between DNC Class members, and which may be determined without
23 reference to the individual circumstances of any DNC Class members, include, but
24 are not limited to, the following:

- 25 a. Whether, within the four years prior to the filing of this
26 Complaint, Defendant or its agents placed more than one
27 solicitation call to the members of the DNC Class whose
28 telephone numbers were on the National Do-Not-Call Registry

1 and who had not granted prior express consent to Defendant and
2 did not have an established business relationship with
3 Defendant;

4 b. Whether Defendant obtained prior express written consent to
5 place solicitation calls to Plaintiff or the DNC Class members'
6 telephones;

7 c. Whether Plaintiff and the DNC Class member were damaged
8 thereby, and the extent of damages for such violation; and

9 d. Whether Defendant and its agents should be enjoined from
10 engaging in such conduct in the future.

11 28. As a person that received numerous solicitation calls from Defendant
12 within a 12-month period, who had not granted Defendant prior express consent
13 and did not have an established business relationship with Defendant, Plaintiff is
14 asserting claims that are typical of the DNC Class.

15 29. Common questions of fact and law exist as to all members of The
16 DNC Class which predominate over any questions affecting only individual
17 members of The DNC Revocation Class. These common legal and factual
18 questions, which do not vary between DNC Revocation Class members, and which
19 may be determined without reference to the individual circumstances of any DNC
20 Revocation Class members, include, but are not limited to, the following:

21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant or its agents placed more than one
23 solicitation call to the members of the DNC Class whose
24 telephone numbers were on the National Do-Not-Call Registry
25 and who had revoked any prior express consent and any
26 established business relationship with Defendant;

27 b. Whether Plaintiff and the DNC Class member were damaged
28 thereby, and the extent of damages for such violation; and

1 c. Whether Defendant and its agents should be enjoined from
2 engaging in such conduct in the future.

3 30. As a person that received numerous solicitation calls from Defendant
4 within a 12-month period, who, to the extent one existed, had revoked any prior
5 express consent and any established business relationship with Defendant, Plaintiff
6 is asserting claims that are typical of the DNC Revocation Class.

7 31. Plaintiff will fairly and adequately protect the interests of the members
8 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
9 class actions.

10 32. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims
12 of all Classes members is impracticable. Even if every Classes member could
13 afford individual litigation, the court system could not. It would be unduly
14 burdensome to the courts in which individual litigation of numerous issues would
15 proceed. Individualized litigation would also present the potential for varying,
16 inconsistent, or contradictory judgments and would magnify the delay and expense
17 to all parties and to the court system resulting from multiple trials of the same
18 complex factual issues. By contrast, the conduct of this action as a class action
19 presents fewer management difficulties, conserves the resources of the parties and
20 of the court system, and protects the rights of each Classes member.

21 33. The prosecution of separate actions by individual Classes members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Classes members not parties to
24 such adjudications or that would substantially impair or impede the ability of such
25 non-party Class members to protect their interests.

26 34. Defendant has acted or refused to act in respects generally applicable
27 to The Classes, thereby making appropriate final and injunctive relief with regard
28 to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

37. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

38. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

41. As a result of Defendant's knowing and/or willful violations of *47*

1 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
2 are entitled an award of \$1,500.00 in statutory damages, for each and every
3 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

4 42. Plaintiff and the DNC Class and DNC Revocation Class members are
5 also entitled to and seek injunctive relief prohibiting such conduct in the future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

8 **FIRST CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(c)**

- 11 • As a result of Defendant's negligent violations of *47 U.S.C.*
12 *§227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation Class
13 members are entitled to and request \$500 in statutory damages, for
14 each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
15 • Any and all other relief that the Court deems just and proper.

16 **SECOND CAUSE OF ACTION**

17 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
18 **Act**

19 **47 U.S.C. §227(c)**

- 20 • As a result of Defendant's willful and/or knowing violations of *47*
21 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation
22 Class members are entitled to and request treble damages, as provided
23 by statute, up to \$1,500, for each and every violation, pursuant to *47*
24 *U.S.C. §227(c)(5)*.
25 • Any and all other relief that the Court deems just and proper.

26
27 ///

JURY DEMAND

43. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of February, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff